

REMARKS

Entry of the foregoing and reexamination and reconsideration of the subject application, as amended, pursuant to and consistent 37 C.F.R. §1.112, are respectfully requested in light of the following remarks:

STATUS OF CLAIMS

Claims 1, 6-9, 16, 17, 19, 22-25, 27-32, 34-48, 56-63, 68-74 and 78-90 remain in this application.

Claim 1 has been amended to make it clear that the light reflective particles have a spectral reflectance in the visible spectrum of at least 70%. This is supported at least by paragraph [0067] of the as-filed specification. Claim 56 has been amended to be consistent with amended Claim 1. Clearly, no new matter has been added.

CLAIM REJECTIONS - 35 USC § 103

Claims 1, 6-9, 16, 17, 19, 22-24, 27, 28, 30, 34-48, 56-63, 68-72, 78-83 and 85-90 have been rejected under 35 USC § 103(a) as being unpatentable over Oko et al. WO 01/51015 (hereafter OKO) in view of Christie et al. US 6,325,847B1 (hereafter CHRISTIE). Applicants submit, however, that Claims 1 and 56, the only independent claims in the application, are free of this rejection and that therefore all of the claims are free of this rejection.

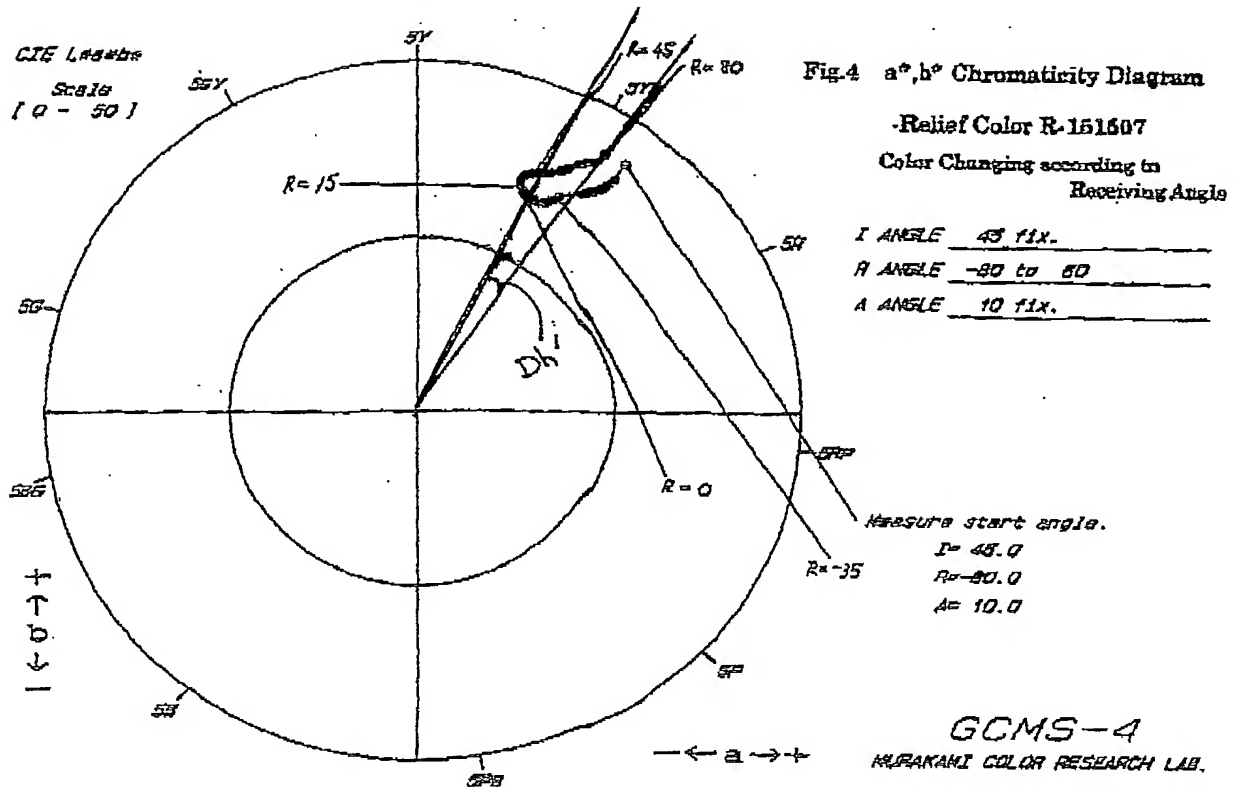
Current Claim 1 recites *inter alia* a cosmetic composition creating an optical volumizing effect once applied to a substrate, comprising at least:

- one goniochromatic coloring agent having a variation of the hue angle Dh of at least 30° [...] for an illumination at 45° and a variation of the angle of observation of between 0° and 80°, and

- an amount of reflective particles, different from said at least goniochromatic agent, having a substrate made from glasses and a spectral reflectance in the visible spectrum of at least 70%.

Moreover, Applicants submit that the presently recited reflective particles reflect the incident light with an intensity sufficient to be able to create at the surface of the claimed composition, when said composition is applied to the support to be made up, highlight points that are visible to the naked eye, *i.e.*, more luminous points that contrast with their surroundings by appearing to shine (*cf* pages 4-5, paragraphs [0020] and [0021] of the present specification).

First, OKO does not teach or suggest a goniochromatic agent according to the present invention. Indeed, with the accompanying Information Disclosure Statement is enclosed a product information data sheet of the product "Relief Color" of Presperse. This product corresponds to the preferred embodiment of OKO (see page 4, lines 15 to 17 of OKO). The data sheet was provided in the IDS of the US counterpart of OKO: US 6,428,773, also listed on the accompanying Form PTO-1449. Figure 4 of the data sheet (reproduced below) shows the Chromaticity Diagram of the shadow pigment of OKO, the variation of the hue angle Dh' for an illumination at 45° and a variation of the angle of observation of between 0° to 80° is approximately 8° and thus is less than 30° .



Thus, OKO is insufficient to teach or even suggest reflective particles according to the present invention. Clearly, OKO alone is insufficient to teach or suggest the claimed invention.

Applicants have tried to obtain the pigments of CHRISTIE in order to measure their spectral reflectance and to determine whether these pigments fall within the scope of the reflective particles according to the invention. However after careful research, to the knowledge of the Applicants, the pigments of CHRISTIE do not exist elsewhere than in CHRISTIE's discussed patent.

As such, it has not been possible to measure CHRISTIE's pigments' spectral reflectance. Thus, Applicants submit that, to their knowledge, it is not possible for one of ordinary skill in the Art to determine whether pigments of CHRISTIE can be considered as reflective particles according to the present invention.

In addition, CHRISTIE does not teach or suggest a composition, let alone a cosmetic one, comprising a goniochromatic agent and reflective particles according to the invention which are *inter alia* different from said goniochromatic agent.

CHRISTIE is furthermore insufficient to suggest the incorporation in a cosmetic composition of two different pigments according to its invention.

Finally, CHRISTIE does not teach a cosmetic composition creating an optical volumizing effect once applied to a substrate.

Therefore, CHRISTIE alone is insufficient to teach or suggest the claimed invention.

The arguments hereunder are submitted in response to the arguments of the Examiner who considers that OKO and CHRISTIE can be combined.

The objective of OKO is to obtain cosmetic compositions which allow one to keep the color-flop effect of the "shadow pigment" (see page 3, lines 7 to 21 of OKO). OKO also discloses that this problem would be unexpectedly solved by the combination of its unique interference pigment and one or more standard interference pigments (see page, lines 16 to 30 OKO). OKO does not teach that pigments other than standard interference pigments, for example reflective particles, would show the alleged unexpected effect.

Contrary to the assertion of the Examiner, one of ordinary skill in the art would not have been motivated to incorporate particles according to CHRISTIE in a

composition according to OKO in order to obtain highlight points and an improved volumizing effect. Indeed:

1. OKO teaches one of ordinary skill in the art away from obtaining highlight points. Indeed, OKO aims at getting a variety of different shades (see page 3, lines 17-19 of OKO) which is not compatible with highlight points. Indeed, OKO aims at obtaining a volumizing effect using a "shadow effect" which may consist in making the prominent portions of the lips appear fuller by shadowing the less prominent portion of the lip (see page 2, lines 12 to 16 of OKO). Highlight points may affect the dark/light contrast aimed at by OKO. Indeed, highlight points in a dark make-up area may render the dark make-up area more luminous, thus contrasting less with light make-up area. Thus, highlight points may affect and reduce the "shadow effect" sought by OKO.

2. As stated above, OKO teaches standard interference pigments and teaches away from combining its shadow pigment with non-standard interference pigments such as particles according to CHRISTIE. Indeed:

a. Among all the standard interference pigments taught by OKO (see OKO page 3, line 28 to page 4, line 4) not even one constitutes a particle according to the invention of CHRISTIE. In particular, OKO discloses on page 4, lines 2-4, that its unique interference pigment is preferably combined with standard interference pigments available under the name Timiron® and Flamenco® which are not disclosed by CHRISTIE.

b. One of ordinary skill in the art would not see any advantage in incorporating particles of CHRISTIE in a composition according to OKO. Particles of CHRISTIE as disclosed in Example 2, column 7, lines 15 to 18, have a color-flop

effect and OKO considers only a combination of a shadow pigment having a color-flop effect with some standard interference pigments selected to keep the contrast between the two colors of the interference pigment (see page 3, lines 7 to 15 of OKO). Thus, one of ordinary skill in the art would not be motivated to introduce, in a composition according to OKO, another agent providing a color-flop effect which may render the effect of the "shadow pigment" of OKO no longer perceptible.

3. CHRISTIE does not aim to obtain a cosmetic composition with an improved volumizing effect, and cannot suggest any interest of the disclosed particles to reach this goal.

Finally, as to the rejection of Claims 31, 32, 73 and 74 under 35 USC § 103(a) as unpatentable over OKO and CHRISTIE in further view of Simon FR 2 777 178 (hereafter SIMON) and the rejection of Claims 42 and 84 under 35 USC § 103(a) as unpatentable over OKO and CHRISTIE in further view of Blin et al. FR 2 816 830 (hereafter BLIN), Applicants submit that SIMON and BLIN are not sufficient to teach or suggest reflective particles according to the claimed invention. These references do not supply the basic deficiencies set forth above for OKO, CHRISTIE and their combination and therefore cannot render any of Applicants' claims obvious.

In view of the foregoing, withdrawal of all record § 103(a) rejections are believed to be in order and is earnestly solicited. Further, favorable action in the form of a Notice of Allowance is respectfully requested.

Respectfully submitted,

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